



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

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LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Post & Fax

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Miss WONG Ching Man, Adeline, JP
Under Secretary for Constitutional and Mainland Affairs
Constitutional and Mainland Affairs Bureau
12/F, East Wing, Central Government Offices
2 Tim Mei Avenue
Tamar, HONG KONG
(Fax No.: 2521 8702)

Dear Miss WONG,

Personal Data (Privacy) (Amendment) Bill 2011

With reference to the captioned bill now being studied by the Bills Committee, the Administration may wish to follow up on the following additional matters arising from its clause-to-clause examination to facilitate its further deliberations -

- (a) Section 14(7) of Personal Data (Privacy) Ordinance (Cap. 486)

It is noted that the subsection provided that "The Commissioner shall cause data user returns to be available to be obtained by data users.....". Unlike the Chinese version, the English wording appears to be unnecessarily repetitious and confusing. There may be a need to improve its presentation;

(b) Proposed section 19(1A) (Clause 12(1))

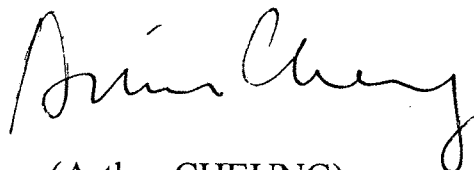
According to the Consultation Document on Review of the Personal Data (Privacy) Ordinance (consultation document) issued in August 2009, the justification for proposing new section 19(1) is based on the understanding that "if the data user does not hold the data, there is no explicit provision that the data user is required to inform the requestor in writing of this" (paragraph 30). There is however no elaboration as to why section 19(2), despite its plain meaning, does not apply to the case of a data user who is "unable to comply" for the reason that the request is impossible to comply because the user does not hold the data, particularly why such an understanding is taken that would leave a lacuna that should obviously have been contemplated (see section 18(4)(a)) and dealt with in the context of section 19(2). If there is any doubt at all as to the effect of section 19(2), has the Administration considered suitably and slightly amending that section by way of clarification instead of substantially amending section 19(1) based on the understanding in the consultation document? The Administration may also draw the attention of the Bills Committee to any judicial authority that throws light on the proper understanding of the effect of section 19(2). It is also noted that section 19(1A) is proposed to be added to section 19(2) and it appears odd that if it is considered objectionable not to allow the Police to comply with a data access request in writing under subsection (1A), the same objection should not apply to section 19(2)(a);

(c) Proposed section 20(5) (Clause 13(4))

It is further noted that in the consultation document, the problem sought to be addressed by this proposed section arises from the standing instruction made by the Administrative Appeal Board (AAB), which "would normally require the PCPD to serve on the AAB, the appellant and the party bound by the decision a copy of every document in the possession or under the control of PCPD which includes a copy of the requested data The discovery process enables the complainant to obtain the requested data before the case is

heard by the AAB or the court" (paragraphs 13 – 14, page 54). Since the problem arises from the standing instruction of AAB, it is not clear why it is proposed to make a legislative amendment instead of amending the standing instruction. The Administration may also wish to clarify the problem with similar proceedings in the High Court and District Court to warrant extending the scope of the legislative amendment to those courts. Lastly, as the proposed section does not refer to the Magistrates Ordinance (Cap. 227), the Administration explained to the Bills Committee at its meeting on 3 January 2012 that the specified body referred to in the proposed section would not include a magistrate despite the definition of "**specified body**" in proposed subsection (6). However, it is noted that the relevant proposal made in paragraph 16 of the consultation document clearly envisages the magistrate along with the AAB and a court.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Arthur Cheung', written in a cursive style.

(Arthur CHEUNG)

Senior Assistant Legal Adviser

c.c. Clerk to Bills Committee